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FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)
MM DOCKET No.: 94-147)
JAMES A. KAY, JR.)
)
LICENSEE OF 152 PART 90)
LICENSES IN THE LOS ANGELES,)
CALIFORNIA AREA)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAMES A. KAY, JR.)
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LICENSEE OF 152 PART 90)
LICENSES IN THE LOS ANGELES,)
CALIFORNIA AREA)

Room No. 1, Courtroom A-363
The Portals Building
445 12th Street, S.W.
Washington, D.C.

Wednesday,
January 20, 1999

The parties met, pursuant to the notice of the
Judge, at 10:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

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2512

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
James A. Kay, Jr.	2514	2523	2547		

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Wireless Bureau:</u>			
352	2528	2530	

Hearing Began: 10:00 a.m.
Recess Began: -

Hearing Ended: 11:30 a.m.
Recess Ended: -

1 P R O C E E D I N G S

2 THE COURT: Mr. Kay?

3 MR. SCHAUBLE: Your Honor, I did have one
4 preliminary matter.

5 THE COURT: Yes?

6 MR. SCHAUBLE: And that is the inquiry of counsel
7 for Mr. Kay into the status of the production of the
8 invoices that Ms. Marshall testified about during her
9 testimony concerning the rentals of radios.

10 MR. KNOWLES-KELLETT: We don't -- we can inquire
11 of the witness. If I can ask him a line of questions and so
12 we have a record on it, but there are no such invoices, if
13 you wish. Thank you for reminding me of that.

14 THE COURT: I knew there was an explanation.

15 MR. KNOWLES-KELLETT: I can ask the witness a few
16 questions and then we'll have it on the record as to what
17 the status of that is.

18 THE COURT: All right then.

19 MR. KELLER: I have one preliminary matter, too,
20 Your Honor. It's not important but I promised somebody I
21 would bring it up.

22 I received a call the other day from Jim Hanno,
23 the expert witness. And he wanted me to relay to you all
24 that he -- the ITU conference he attended was in '96 and not
25 '97. I assured him we'd take care of that when we did

1 corrections to the transcript, but I would also state on the
2 record. I told him I didn't think it was critical.

3 MR. SCHAUBLE: I don't think the dates matter.

4 THE COURT: Well, if you just want to correct the
5 record, that's fine.

6 All right. Let's continue then.

7 MR. SHAINIS: Mr. Keller's first, then I'll have
8 one or two questions.

9 THE COURT: All right.

10 Whereupon,

11 JAMES A. KAY, JR.

12 having been previously duly sworn, was recalled as a witness
13 herein and was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. KELLER:

16 Q Mr. Kay, the matter we were just discussing, could
17 you explain first of all, the procedure on how invoices for
18 rental radios are handled in your shop?

19 A Well, if a customer has a need for radios, one of
20 the staff will write up an invoice that'll scoop up whatever
21 radios are needed, provide them to the customer, the
22 customer signs the form, and the customer leaves with the
23 radios. Usually it takes -- if it's a for-pay rental,
24 usually they take some type of deposit or payment. And when
25 the customer returns with the radios, they close out the

1 invoice.

2 Q And what is done with the invoice after the
3 customer returns with the radios and they're closed out?

4 A It could go either into a customer file or what
5 they call a daily file.

6 Q Now, there was testimony here that Ms. Marshall
7 had specifically recalled writing some invoices for loaner
8 or rental radios or what for Mr. Hessman for some use and
9 some activities he was involved in. But it was raised by
10 the Bureau that copies of those invoices were not among a
11 collection of invoices that we put in our direct case
12 exhibit. I believe Kay Exhibit 52.

13 Do you have any knowledge to explain why invoices
14 for rentals or loaners to Mr. Hessman would not be among the
15 rental invoices they collected?

16 A I can only estimate. And that would be that
17 because it was an employee, the only reason we use the
18 invoices was to keep track of the radios when they were out
19 to make sure they all got back. And the invoices may have
20 been disposed of or we didn't find them when we searched.
21 We looked for as many rental invoices as we could find, but
22 I don't think by all means got all of them.

23 Q It's true there is no file of invoices. Correct?

24 A There's no repository for rental invoices.

25 Q You have to search through each customer file and

1 then possibly daily receipts files as well?

2 A Those I know were looked through, but I don't know
3 just how thoroughly. They did it in quite a hurry.

4 Q It is also true that when Mr. Hessman or other
5 employees used radios on a loaner or rental basis, that you
6 did not charge them?

7 A That's correct.

8 Q So, the only purpose of the invoice was to note
9 that the radio was out and to track it when it returned.
10 Correct?

11 A Basically, inventory control, yes.

12 BY MR. SHAINIS:

13 Q Mr. Kay, just a few more questions. You testified
14 concerning damage to your business. Was there also damage
15 to your home?

16 A Yes.

17 Q And can you describe the extent of the damage?

18 A Well, we're about \$150,000 to \$200,000 and still
19 climbing. Had to replace on the outside, walls or repair
20 them. There was damage to internal walls and external walls
21 on my house. Cabinetry was damaged. I lost about half my
22 glasses. Tremendous amounts of foodstuffs and bottles of
23 all nature that were literally thrown out of the cabinets
24 onto the floor. I had was best -- can be described as a sea
25 of broken glass, six inches tall all across the kitchen

1 floor. There was massive saturation of the carpets from
2 foodstuffs and beverages.

3 Literally, everything in all the cabinets and
4 closets was thrown out of the cabinets. If it could be
5 knocked down or thrown askew, it was. The place was a total
6 and complete mess.

7 I have ten -- actually, seven sliding glass
8 windows or doors in my house. Every one of them was knocked
9 off the tracks. And the double thermal pane ones I have in
10 my patio required bending with a huge pry bar to get back
11 on. They were jammed.

12 In short, it created a mess, clean-up and repair
13 job that even to this day, we're still doing some repairs
14 from. We still find damage.

15 MR. SHAINIS: Thank you. Your Honor, we're
16 finished our cross-examination.

17 THE COURT: Well, some areas were not covered. I
18 don't know if you intend to cover it, but I think it should
19 be. Conversations with Mr. Jensen concerning the balance,
20 if such conversations took place, what's Mr. Kay's version.
21 I think we might do something -- well, I think we should
22 have in the record -- sir, let me ask you this. Mr. Jensen
23 has alleged that you had some conversations with him
24 concerning theoretically how you can interfere with someone
25 else's equipment.

1 I'd like to hear what you have to say about it.
2 Did you have such conversations? If so, what was the nature
3 of the conversations?

4 THE WITNESS: During that time, we were
5 continuously receiving interference with various other radio
6 shops. We have a pretty good idea where it was coming from.
7 And it was a long time ago, but I do remember I showed
8 Jensen and other technicians, management people I had, what
9 was going on, how these people were doing it, so that they
10 could diagnose it and examine it.

11 I remember that in the course of teaching staff, I
12 explained to them the differences between the E.F. Johnson-
13 style trunking, the General Electric-style trunking and the
14 Motorola-style trunking, not only for marketing reasons, but
15 also, the advantages of the LTR.

16 I listened to Mr. Jensen's testimony and I don't
17 know where he's coming off the wall with -- that I told him
18 that I was jamming or something to that effect. I may have
19 shown him, "This is how they were doing it," but I, myself,
20 certainly did not do any jamming.

21 And his description of somehow using a service
22 monitor, that isn't the way service monitors function. They
23 don't work that way, for one thing. They're very low output
24 power and it certainly would not be the choice of a jammer.

25 Also, his description of a Motorola trunking

1 system was very much in error. They don't use four data
2 channels. They choose four channels that could be used for
3 data.

4 You see, I'm quite confused because that's not the
5 way the equipment works. And I don't know how he would get
6 the idea that I would have done any jamming because that
7 isn't the way it would be done.

8 I mean, you use a service monitor to be able -- a
9 service monitor, you have to understand what the machine is.
10 It's a combination, low-level signal generator. It -- I
11 think its maximum output level is like 120th of one watt or
12 .05 watts. It has no power to speak of. It's not even
13 licensed as a transmitter. Its purpose is for aligning
14 radios and to be able to monitor off the air and for radios
15 that are under test. It's purely a service instrument. And
16 it could be used to monitor off the air so that you could
17 listen to what a trunk system sounds like.

18 It's entirely possible that I dialed up one or
19 more trunk systems to show him and others, "This is what a
20 Motorola system sounds like. So, you differentiate its data
21 channel, which has a very distinct sound to it as compared
22 to other sounds that you'll hear off the air. And this is
23 the way the system functions electronically, and this is the
24 way Motorola trunk mobiles and portables will interact with
25 the trunk system."

1 And also, there were weak links on the E.F.
2 Johnson-style system, where technicians being creative could
3 cause malfunctions to certain types of backbone equipment,
4 the mountaintop equipment, for the LTR format systems. Mine
5 weren't susceptible to it, because I was using Unidens. But
6 the older E.F. Johnson backbones were susceptible to it.

7 There were a number of dirty tricks technicians
8 occasionally did. The less reputable ones in the business
9 did do that to some people.

10 THE COURT: Could you tell us about the marketing
11 agreement that you entered, that Mr. Jensen entered into,
12 and what were the circumstances of that agreement?

13 THE WITNESS: When Mr. Jensen first started with
14 me, I think it was for about the first year he worked with
15 me, we used to talk outside business because he was always
16 involved in one type of would-be entrepreneurship or
17 another. Before he came to work for me, he was involved in
18 security companies and taxi cab companies. He always wanted
19 to have his hand in business in some fashion. And he always
20 -- I should say admired or desired to be in any business
21 that was profitable for him.

22 He saw me doing SMRs and doing repeaters. And I
23 guess we discussed -- he brought up or I brought up with him
24 -- I don't remember, it was so long ago -- that he could do
25 it, as well. And he wanted free use of our radios for

1 outside things that he was doing.

2 I didn't consider it a big deal, but I prepared a
3 license for the man so he could use our radios on his own
4 time, because he had possession of our shop radios in his
5 own personal vehicle and he had a portable, as well as he
6 talked to Mr. Hessman. And there's some other names, but
7 they escape me, of people that had radios that he talked to
8 that were completely outside my business. And he was doing
9 it on his own time on evenings and weekends.

10 I don't know everything that he was doing. And
11 sometimes I wish I did, because I'd be able to testify to it
12 better.

13 THE COURT: But how did you enter into the
14 marketing agreement?

15 MR. SHAINIS: Your Honor.

16 THE COURT: I'm sorry.

17 MR. SCHAUBLE: That was Mr. Cordaro, I believe.

18 THE WITNESS: It was a verbal agreement. It was
19 nothing written.

20 THE COURT: All right. Could you tell us the
21 circumstances as to the written agreement that involved Mr.
22 Cordaro -- marketing agreement?

23 THE WITNESS: When Mr. Sobel's name appeared on
24 the draft HDO, he wanted a written marketing agreement --
25 management agreement to show our relationship. And it

1 was -- I can't go into attorney-client conversations with
2 Brown and Schwaninger, but I decided that --

3 THE COURT: You can say based on their advice.

4 THE WITNESS: Okay. Based upon their advice, I
5 entered into management agreements with Mr. Cordaro and Mr.
6 Gales so that if and when the Bureau decided to examine my
7 relationship with either licensees, that they would have a
8 clear written record that what we were doing was all up
9 front and perfectly legitimate. So, that's why the other
10 ones were entered, was to show that I had a perfectly
11 healthy and above-board relationship with these people.

12 THE COURT: Was there also -- well, I guess in the
13 case of Mr. Hessman, was that also a written agreement?

14 THE WITNESS: Hessman only -- had no written
15 agreement. He was -- basically, he did nothing but borrow
16 radios from us for his security control gig. I still don't
17 know where or when he did it. They just approached me and
18 said, "Hey, can we use radios?" I said, "Sure, no problem."
19 They said they needed a couple good channels. Okay. "Use a
20 couple 800 channels. I'll prepare the licensing for you.
21 Pull a whole batch of radios and go for it."

22 And beyond that, I heard through the grapevine
23 that he used a bunch of our radios. I remember he used to
24 park his Toyota Landcruiser out back and it had an 800
25 megahertz antenna on it or an 800 megahertz radio of ours in

1 it. We supplied him the radios. We know he did it, but he
2 was on his own time doing it, completely independent of my
3 shop. I saw bits and pieces of it, but I never really went
4 into detail for that.

5 THE COURT: All right. Redirect?

6 MR. SCHAUBLE: Some, Your Honor.

7 THE COURT: Go ahead.

8 CROSS-EXAMINATION

9 BY MR. SCHAUBLE:

10 Q Mr. Kay, in response to a question from your
11 counsel, I believe you testified that you did not want to --
12 that you wanted to keep -- you refer to a system
13 configuration data confidential. Do you recall that
14 testimony?

15 A You mean, my customers' information? Absolutely.

16 Q Okay. My question is, exactly what sort of data
17 did you mean by system -- you used the term system
18 configuration, and my question is, exactly what type of
19 information did you mean by system configuration data?

20 A The frequencies the customer operates on are
21 obviously very critical. That would certainly be part of
22 it. The mountain tops on which they're operating these
23 frequencies is also very critical. And even more beyond
24 that would be the digital codes or CTCSS has tone codes and
25 LTR ID codes and home channel codes that are part of the LTR

1 ID system, which actually allow the customers' radios to
2 work.

3 We've had instances where a renegade radio shop
4 deliberately cut into one of my security patrol company
5 systems, and direct threats to the officers' safety were
6 transmitted over my trunk systems to my security patrol
7 company, which is rather unnerving to these security patrol
8 company employees to have death threats delivered their
9 direction, and to know that somebody was monitoring their
10 movements and activities.

11 That type of information as to literally how to
12 cut into somebody's system must be kept confidential.

13 Q Okay. Now, the Commission's 308(b) letter
14 requested information concerning frequencies in mountain
15 tops. Correct?

16 THE COURT: Well, let's identify --

17 MR. SCHAUBLE: WTB Exhibit 1. I believe the
18 witness needs to refer to WTB Exhibit 1.

19 THE COURT: I just want to make sure we have the
20 specific one. WTB Exhibit 1?

21 MR. SCHAUBLE: Yes.

22 THE COURT: All right.

23 THE WITNESS: Yes, I know what it is.

24 BY MR. SCHAUBLE:

25 Q But it did not request information concerning any

1 of these codes. Correct?

2 A The codes, no, the frequencies, yes. And any
3 radio technician who knows the frequency and the location of
4 where a particular system is being operated need only dial a
5 service monitor or similar receiver instrument with the
6 appropriate decoders attached to it, and they can have that
7 system information by reading it off the air.

8 Q Okay. Mr. Kay, turn to WTB Exhibit Number 3.

9 A Yes.

10 Q You provided some testimony concerning your review
11 of this letter. My question is, you understood at the time
12 you reviewed this letter that you, through your attorneys,
13 were declining to provide the information the Commission
14 directed you to provide in the January 31 308(b) letter.
15 Correct?

16 A I believe I already testified to that.

17 Q Okay. With respect to the Thompson Tree, is it
18 correct that your finder's preference request was dismissed
19 because the matter had been subject to an investigation
20 prior to the filing of your finder's preference request?

21 A That's disingenuous because you know that the
22 investigation was prompted by my own letter. The only
23 investigation they had was from my own letter, which I had
24 never received a reply to and thus filed a finder's
25 preference.

1 Q Mr. Kay, isn't it correct that was the result of
2 the disposition of your finder's preference request?

3 A The finder's preference was dismissed about a week
4 after Anne Marie Wypijewski spoke with Mrs. Thompson.
5 She -- Ms. Wypijewski told Ms. Thompson what she was going
6 to do with the finder's preference, and then proceeded to do
7 that.

8 MR. SCHAUBLE: Your Honor, I ask that the witness
9 be directed to answer the question.

10 THE WITNESS: I did.

11 THE COURT: What is your question?

12 MR. SCHAUBLE: The question is what was the
13 disposition of the finder's preference request.

14 THE WITNESS: I did. I said --

15 THE COURT: He just said it was dismissed. Isn't
16 that what he said?

17 MR. SHAINIS: Yes.

18 BY MR. SCHAUBLE:

19 Q Now, Mr. Kay, do you recall approximately when you
20 filed the initial letter requesting that the Thompson Tree
21 license be canceled?

22 A It was some time in 1993. I'd have to look back.
23 It might have been September of '93.

24 Q Okay.

25 A August. Could have been October. Somewhere in

1 the --

2 Q Okay --

3 A -- middle to latter half of '93.

4 Q Now, do you have an understanding that a request
5 that a license be canceled is sometimes referred to as a
6 takeback letter?

7 A Try that on me again.

8 Q Okay. I'll just ask the question. This letter
9 you filed with respect to Thompson Tree was not the only
10 instance in which you had requested that the Commission
11 institute an investigation to determine whether a license
12 should be canceled for failure to construct or failure to
13 operate. Correct?

14 A No, it was not the only one.

15 Q Okay. And as a matter of fact, would it be
16 correct that you filed a considerable number of such
17 letters?

18 A Well, I did. All the radio guys were clearing
19 channels --

20 MR. KELLER: Objection as to relevance. How is
21 this relevant?

22 MR. SCHAUBLE: Your Honor, there has been state of
23 mind testimony entered with respect to Mr. Kay, you know,
24 concerning this one matter. I just want to get in some
25 testimony here. The record will show that Mr. Kay filed a

1 large number of these letters. And in the vast majority of
2 the cases, he received the relief requested. And I think
3 that's part of the record that needs to be considered with
4 respect to his state of mind.

5 MR. KELLER: Your Honor, I'll withdraw the
6 objection because I think that makes the state of mind with
7 what happened with Ms. Thompson all the more compelling.

8 THE COURT: All right. There is no objection.

9 MR. SCHAUBLE: Your Honor, I'm going to provide to
10 the witness and court reporter -- Your Honor, is my next
11 exhibit number 352?

12 THE COURT: Yes.

13 MR. SCHAUBLE: Your Honor, I ask to be marked for
14 identification as WTB Exhibit 352 a two-page letter. The
15 letterhead is Federal Communication Commission dated June
16 30, 1993 addressed to James A. Kay, Jr.

17 THE COURT: Can I get a copy? What is it now?

18 MR. SCHAUBLE: I believe 352, Your Honor.

19 THE COURT: Yes. A two-page letter addressed to
20 Mr. Kay signed by Mr. Hollingsworth, dated June 30, 1993.
21 The document is marked for identification as Bureau Exhibit
22 352.

23 (The document referred to was
24 marked for identification as
25 Bureau Exhibit 352.)

1 BY MR. SCHAUBLE:

2 Q Mr. Kay, have you had a chance to review the
3 document?

4 A Yes.

5 Q Is this a letter you received from the Federal
6 Communications Commission?

7 A Yes.

8 Q Okay. And do you see that this letter requests
9 reports on evidence -- reports on investigations that the
10 Commission has conducted concerning permanent discontinuance
11 of operations by licensees?

12 A Yes.

13 Q And do you see the results with respect to 31
14 different stations?

15 A Yes.

16 Q And does it report that in 27 of those 31
17 instances that the licenses were canceled as you requested?

18 A Yes.

19 MR. SCHAUBLE: Your Honor, I move WTB Exhibit 352
20 into evidence.

21 THE COURT: Any objection?

22 MR. KELLER: No objection.

23 THE COURT: Bureau Exhibit 352 is received.

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(The document referred to,
having been previously marked
for identification as Bureau
Exhibit 352, was received in
evidence.)

7

BY MR. SCHAUBLE:

8

9

Q Mr. Kay, turn back to WTB Exhibit 3 and
specifically page 6 of the exhibit.

10

MR. KELLER: Exhibit which? I'm sorry.

11

MR. SCHAUBLE: Exhibit 3.

12

THE COURT: Page 6.

13

MR. SCHAUBLE: Yes.

14

THE COURT: All right.

15

16

MR. SCHAUBLE: And specifically, I'm referring to
Mr. Kay to the third paragraph.

17

THE WITNESS: Yes.

18

BY MR. SCHAUBLE:

19

20

21

22

Q Now, is it correct, Mr. Kay, that this paragraph
of this letter is the only place in the correspondence
between you and the Commission which mentions damage caused
by the Northridge earthquake to your business?

23

24

A I don't know. I haven't examined through to see
if it is.

25

Q Okay.

1 THE COURT: I think there is another place where
2 it is alluded to.

3 THE WITNESS: I think that's correct. I think
4 there was at least one other spot.

5 BY MR. SCHAUBLE:

6 Q Mr. Kay, is it correct that you never requested an
7 extension of time to respond to the letter based upon your
8 inability to provide the information requested?

9 A Again, I think my letters from my counsel speak
10 for themselves. If I have to look through to see the
11 reasons that were cited by my counsel --

12 Q Okay.

13 A You have the letters.

14 Q Do you recall requesting for an extension of time
15 based on the inability to provide the information requested?

16 A I believe there were extensions of time that were
17 requested, but I don't remember off the top of my head
18 exactly the reasons cited by my counsel.

19 THE COURT: There was a three-week extension
20 requested somewhere, wasn't there?

21 MR. SCHAUBLE: There was. Your Honor, there was.
22 I believe it's WTB Exhibit 13, which is an extension request
23 based upon key to the providing of the Vaughn Index and a
24 Freedom of Information Act request. That's WTB Exhibit 13.
25 And I believe there was an extension --

1 MR. KELLER: Obviously, there would have been
2 extensions prior to that.

3 THE WITNESS: There was.

4 THE COURT: There was an extension I thought
5 because of the Northridge earthquake. I thought I read
6 somewhere there was such an extension, which was denied.

7 THE WITNESS: There were one or more requests for
8 extension that were denied.

9 MR. SCHAUBLE: Your Honor, I'm not aware of
10 anything tied to the Northridge earthquake.

11 THE COURT: These are all the letters --

12 MR. SCHAUBLE: The documents will be speak for
13 themselves.

14 THE COURT: But this is all the letters.

15 BY MR. SCHAUBLE:

16 Q Now, Mr. Kay, in 1994, did you ever explain to the
17 Commission that there had been damage to your computer
18 system as a result of the earthquake?

19 A I don't know. I believe there may have been some
20 information contained in some of my attorney's letters
21 again. We may have to take a look at the letters. But I
22 believe that computer damage was cited in at least one or
23 more of the letters.

24 THE COURT: Counsel, I would refer you to Mr.
25 Brown's -- I don't know what this refers to, but your

1 Exhibit 15, of which there's a reference that the Commission
2 denied all of Mr. Kay's requests for extension of time. I'm
3 pointing out that Mr. Kay had requested extensions of time,
4 and they were all denied. And I don't know what that
5 relates to, but that's in here.

6 MR. SCHAUBLE: Your Honor, my understanding is
7 that relates to extensions of time based upon the request
8 for the Vaugh Index or to receive the complaints in response
9 to the Freedom of Information Act.

10 THE COURT: Well, I'm not so sure, but whatever
11 the records reflect, the records reflect. If we have all
12 the letters here --

13 MR. KELLER: Do we have all the letters?

14 THE COURT: I think Kay added some letters to it.

15 MR. SCHAUBLE: Yes. With the letters -- the
16 Bureau added a couple of additional letters into the record,
17 and I believe Mr. Kay added one or two letters.

18 THE COURT: Maybe one of those letters.

19 BY MR. SCHAUBLE:

20 Q Mr. Kay, is it true that you were able to send
21 bills to your customers by February 1994?

22 A Were we able to send bills on that date?

23 Q Yes.

24 A Yeah, I told you the system was damaged January 17
25 with the earthquake. I did not say it was knocked out of

1 commission.

2 Q Okay.

3 A And it's entirely possible we'd been able to send
4 some bills off, but the machine was constantly freezing up,
5 locking up, had to be rebooted. And we'd get some work off
6 of it, and it'd freeze up again.

7 Q Now, Mr. Kay, you kept in your records copies of
8 all your station licenses. Correct?

9 A More or less. They were all kept in files. I
10 didn't throw them out.

11 Q Now, you testified concerning the number of
12 documents you needed to produce in response to the 308(b)
13 letter. Is it correct that a majority of the documents you
14 produced to the Bureau in discovery in this proceeding after
15 designation consisted of your paper customer files?

16 A Those are our business records. That's what you
17 guys asked for in the 308(b). "Must be supported by
18 business records." They are business records.

19 Q Okay. Now, is it correct that much of the
20 material in those files consisted of all the bills you would
21 send to customers from time to time?

22 A Correct, those were business records.

23 Q Okay. Now, is it correct that the prior bills
24 would not be required to be produced in order to respond to
25 the Commissions's 308(b) letter. Correct?

1 A I don't know that.

2 THE COURT: There were a lot of requests from that
3 308(b) letter. Can you be more specific?

4 MR. SCHAUBLE: Okay.

5 THE COURT: If you want to go through each one
6 point by point, you can, but speaking generally about it
7 doesn't help the record.

8 THE WITNESS: The Commission was very unwilling to
9 clarify exactly what it wanted in the 308(b), to narrow it,
10 or describe it any way. So, it says billing records, I
11 assume it wants bills. It wants copies of my billing
12 records for all customers. And that's what we ultimately
13 provided in discovery.

14 Now, you had the opportunity to clarify it and
15 narrow it. We certainly asked you, and the Bureau did not.

16 BY MR. SCHAUBLE:

17 Q Now, Mr. Kay, turn to WTB Exhibit 1.

18 A Yes.

19 Q It was your understanding that this 308(b) letter
20 was requesting for and specifically referring to the
21 numbered paragraph 6. Do you have that before you?

22 A Yes.

23 Q Okay. Your understanding that that paragraph was
24 asking for information as to a given point in time.
25 Correct?

1 THE COURT: Does it say that?

2 THE WITNESS: No, it doesn't.

3 THE COURT: I assume the Bureau would say what
4 they mean. They didn't set forth a specific period of time.
5 Did they?

6 MR. KELLER: I believe --

7 MR. SCHAUBLE: Your Honor, there's always been --
8 there's already -- you know, I'm just trying to refresh the
9 witness's -- consistent with the witness's recollection on
10 his own direct testimony. I was just trying to --

11 THE COURT: What does the letter say? If the
12 letter sets forth a specific time period that the Commission
13 is interested in, then that request sits.

14 MR. SCHAUBLE: Your Honor, I can go through this
15 in subsequent letters --

16 THE COURT: Well, you're talking about this
17 letter. The letter speaks for itself what it says. It
18 doesn't set forth a specific time period.

19 MR. KNOWLES-KELLETT: The date as of which we
20 wanted it was any date --

21 THE COURT: Did it say that?

22 MR. KNOWLES-KELLETT: It was clarified in a later
23 letter.

24 THE COURT: Oh, I don't know about later. We're
25 talking about this letter. That's what Counsel's talking

1 about. And I said as far as this letter is concerned,
2 there's no specific time set. I mean, that's clear by
3 looking at the letter.

4 BY MR. SCHAUBLE:

5 Q Mr. Kay, please turn your attention to WTB Exhibit
6 12. It's the June 10, 1994, letter.

7 A Uh-huh. I have it.

8 Q Okay. The third paragraph on the first page. You
9 understood, at least as of that time, that you can provide
10 the information for any date, either January 1, 1994, or any
11 date after January 1, 1994, that was convenient to you.
12 Correct?

13 A That's what it says.

14 Q Okay. Now, you provided -- in response to
15 questions from your counsel, you provided information
16 concerning testimony concerning demos and shop use by other
17 dealers. Do you recall that testimony?

18 A Yes.

19 Q You did not keep any sort of records concerning
20 shop use by other dealers, did you?

21 A It depends on what you define as records.

22 Q Okay. Did you keep any sort of written -- any
23 writing that would memorialize or establish shop use by
24 other dealers?

25 A We issued frequencies and tones and system

1 information and home channel ID codes for the trunks so
2 these other radio shops could use our systems. No billing
3 records were generated because we weren't billing them.

4 I believe there are some records for basically
5 keeping track of the frequencies and tones that are assigned
6 to those shops, but they're not billing records, per se.
7 They're simply tech records so that we know that these are
8 in use and by whom.

9 Q Okay. Okay.

10 A And not even necessarily on the computer. As a
11 matter of fact, I think only a few of them are.

12 Q Would this information be contained in what's
13 referred to as the log book?

14 A Most of the locations, yes.

15 Q Okay. What other locations would that information
16 be contained in?

17 A Barbara has paper files for our customers, and I
18 believe she has a separate location where she keeps the
19 dealer information.

20 Q Okay.

21 A I'm not sure exactly where she has it. If I
22 wanted to read it, I'd ask her for it.

23 Q Do you know if that dealer information was
24 produced -- if those files concerning dealers were produced
25 in discovery?